

MOTION FILED
DE 64 1986

(9)
No. 86-421

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

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BOARD OF DIRECTORS OF ROTARY
INTERNATIONAL, et al.,

Appellants,

v.

ROTARY CLUB OF DUARTE, et al.,

Appellees.

____o____

Appeal from the Court of Appeal
of the State of California
Second Appellate District

MOTION OF THE STATE OF CALIFORNIA
FOR LEAVE TO INTERVENE AS OF RIGHT

____o____

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Pursuant to 28 United States Code section 2403(b), the State of California moves this Court for permission to intervene as of right to defend the constitutionality of a California statute. At issue in this case is the constitutionality of California Civil Code sections 51 and 52, the Unruh Civil Rights Act, which appellants Board of Directors of Rotary International, et al. contend is vague and overbroad, in violation of First Amendment associational rights.

As provided in 28 United States Code section 2403(b):

"In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene . . . for argument on the question of constitutionality."

Rule 28.4(c) of the Supreme Court Rules implements this right to intervene where, as here, cases have proceeded to this Court through state courts, and the state whose statute is drawn into question has not been a party.

Under 28 United States Code section 2403(b), states may intervene as of right in this Court when this Court is the first federal court to consider constitutional challenges to a state statute. (*Estate of Thornton v. Caldor, Inc.*, ___ U.S. ___, 86 L.Ed.2d 557, 562 n. 7 [105 S.Ct. 2914] (1985); and *R. Stern, E. Gressman and S. Shapiro*, § 6.16, p. 342 (6th ed. 1986).) As explained most recently in *Maine v. Taylor*, ___ U.S. ___, 91 L.Ed.2d 110, 120 [106 S.Ct. 2440], "a State clearly has a legitimate interest in the continued enforceability of its own statutes"

In the instant case, the State of California did not participate below, as California's Unruh Civil Rights Act permits private parties to litigate allegations of violations. However, now that appellants are asking this Court to find the statute unconstitutionally vague and overbroad, the State of

California, through its Attorney General John K. Van de Kamp, wishes to exercise its right to "intervene and participate in the written and oral arguments before the Court." (R. Stern, et al., supra, at 342.)

For the foregoing reasons, this petition for leave to intervene as of right should be granted.

DATED: DEC 3, 1986

Respectfully submitted,

JOHN K. VAN DE KAMP, Attorney General
of the State of California
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* MARIAN M. JOHNSTON,
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BEVERLY TUCKER,
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Counsel for State of California

* Counsel of Record

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CERTIFICATE OF SERVICE

I, Marian M. Johnston, a member of the bar of this Court, hereby certify, pursuant to rule 28.3 of the Rules of this Court, that on December 2, 1986, I have made service by mail, first class postage prepaid, of copies of this Motion of State of California for Leave to Intervene As of Right, on the following counsel of record for all parties herein, and that all parties required to be served have been served:

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DATED: December 3, 1986

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